

1 APPEARANCES: (CONT'D)

2 MS. JENNIFER KUNTZ
2300 South Dirksen Parkway
3 Springfield, Illinois 62764
(217) 782-3215
4 Appearing for IDOT;

5 MR. THOMAS J. HEALEY
17641 South Ashland Avenue
6 Homewood, Illinois 60430
(708) 332-4381
7 Appearing for Respondent ICRR.

8 MR. EDWARD D. McNAMARA, JUNIOR
931 South Fourth Street
9 Springfield, Illinois 62703
(217) 528-8476
10 Appearing for Preserve Olympian Farmlands;

11 MR. JOE VON DE BUR
527 East Capitol Avenue
12 Springfield, Illinois
(217) 557-1286
13 Appearing on behalf of Staff of the ICC.

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17 SULLIVAN REPORTING COMPANY, by
18 Steven T. Stefanik, CSR

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1		<u>I</u> <u>N</u> <u>D</u> <u>E</u> <u>X</u>			
2	<u>Witnesses:</u>	<u>Direct</u>	<u>Cross</u>	Re- <u>direct</u>	Re- <u>cross</u> By <u>Examiner</u>
3					
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6		None.			
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8		<u>E</u> <u>X</u> <u>H</u> <u>I</u> <u>B</u> <u>I</u> <u>T</u> <u>S</u>			
9	<u>Number</u>	<u>For Identification</u>			<u>In Evidence</u>
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12		None so marked.			
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1 JUDGE DUGGAN: Pursuant to the authority vested
2 in me by the State of Illinois and the Illinois
3 Commerce Commission, I call Docket T11-0134 for a
4 hearing.

5 May I have the appearances for the
6 record?

7 We'll start with attorney for the
8 petitioners.

9 MR. ELLIS: That would be me. John K. Ellis,
10 E-l-l-i-s, attorney at law, 1035 South Second
11 Street, Springfield, Illinois, appearing on behalf
12 of the joint petitioners.

13 JUDGE DUGGAN: Thank you. And appearing on
14 behalf of CN Railroad?

15 MR. HEALEY: Good afternoon, your Honor.

16 Thomas J. Healey, H-e-a-l-e-y, on behalf
17 of Illinois Central Railroad Company, incorrectly
18 named in the petition as Canadian National Railway
19 Company.

20 My office address is 17641 South Ashland
21 Avenue in Homewood, Illinois, 60430. Office number
22 is (708) 332-4381.

1 JUDGE DUGGAN: Okay. And on behalf of Illinois
2 Department of Transportation?

3 MS. KUNTZ: Jennifer Kuntz, K-u-n-t-z, 2300
4 South Dirksen Parkway, Springfield, Illinois,
5 62764. Phone number of (217) 782-3215.

6 JUDGE DUGGAN: Okay.

7 Mr. VonDeBur?

8 MR. VON DE BUR: Joe VonDeBur, V-o-n-D-e-B-u-r,
9 rail safety specialist with the Illinois Commerce
10 Commission, 527 East Capitol Avenue, Springfield,
11 Illinois, (217) 557-1286.

12 JUDGE DUGGAN: Okay. And Mr. McNamara has filed
13 a petition to intervene on behalf of the
14 association called Preserve Olympian Farmland.

15 And so would you enter an appearance to
16 petition to intervene, Mr. McNamara?

17 MR. McNAMARA: Judge, my name is Edward D.
18 McNamara, Junior. I'm an attorney admitted to
19 practice law in the state of Illinois.

20 My business address is 931 South Fourth
21 Street, Springfield, Illinois 62703. Telephone,
22 area code (217) 528-8476.

1 On October the 25th, I filed a petition
2 to intervene in the case on behalf of Preserve
3 Olympian Farmland, consisting of 21 -- or 27
4 property owners located in the vicinity of the
5 proposed project.

6 I would ask at this time that Preserve
7 Olympian Farmland be allowed to participate in this
8 matter and I represent their interests herein.

9 JUDGE DUGGAN: Okay. No objections have been
10 filed, but, Mr. Ellis, is there an objection to
11 this petition to intervene?

12 MR. ELLIS: I have no objection, Judge.

13 JUDGE DUGGAN: Okay.

14 Mr. Healey?

15 MR. HEALEY: No objection, your Honor.

16 JUDGE DUGGAN: Miss Kuntz?

17 MS. KUNTZ: No objection.

18 JUDGE DUGGAN: Mr. VonDeBur?

19 MR. VON DE BUR: No objection, your Honor.

20 MR. McNAMARA: Judge, I also note on the service
21 list -- I don't think Mr. O'Brien's listed.

22 Also participating with me will be

1 Joseph H. O'Brien, same address. He's also
2 admitted to practice in the state of Illinois.

3 JUDGE DUGGAN: Okay.

4 And do you anticipate -- and that's --
5 and what -- as a cocounsel?

6 MR. McNAMARA: Yes, sir. He's of counsel to my
7 firm and will participate.

8 JUDGE DUGGAN: He's of counsel to your firm. Do
9 you -- at this, he's co-counsel?

10 MR. McNAMARA: Yes, sir.

11 JUDGE DUGGAN: Okay.

12 The allegations -- or excuse me -- yeah,
13 the petition to intervene also asserts that the
14 association asked to be treated as an active party
15 to this proceeding, correct?

16 MR. McNAMARA: Yes, sir.

17 JUDGE DUGGAN: Okay. And it is correct that
18 this is a voluntary nonincorporated association?

19 MR. McNAMARA: Yes, sir.

20 JUDGE DUGGAN: Okay.

21 With those understandings then, petition
22 to intervene will be granted on behalf of Preserve

1 Olympian Farmland a voluntary unincorporated
2 association as an active party to this proceeding.

3 Let's address Mr. Healey's point.

4 You state that you're -- the name of the
5 company is stated incorrectly in the caption?

6 MR. HEALEY: Yes. That's correct, your Honor.

7 The --

8 JUDGE DUGGAN: Okay. What -- go ahead.

9 MR. HEALEY: What is -- I'm sorry.

10 The Illinois Central Railroad Company is
11 the owner of the property and the operator of the
12 trains, the dispatcher of the trains at that
13 location. Canadian National Railway Company, which
14 is named, is actually the owner through several
15 holding companies of Illinois Central, but the
16 property is still held in the name of Illinois
17 Central Railroad Company.

18 JUDGE DUGGAN: Okay.

19 Illinois Central Railroad Company
20 operates --

21 MR. HEALEY: Owns the land; operates the trains;
22 actually employs the people on the trains.

1 JUDGE DUGGAN: And Illinois Central Railroad
2 Company is -- is it a subsidiary of
3 Canadian National.

4 MR. HEALEY: Yes. Through a holding company, it
5 is a subsidiary of Canadian National Railway
6 Company.

7 JUDGE DUGGAN: Who's the holding company?

8 MR. HEALEY: The holding company's name is
9 Grand Trunk Corporation.

10 The Grand Trunk Corporation owns all of
11 the railroad -- the operating railroad subsidiaries
12 of Canadian National Railway Company in the
13 United States.

14 JUDGE DUGGAN: Okay. Well, if we're going to
15 get the right party, we probably need to know that
16 structure then.

17 Is both Canadian National and Illinois
18 Central held by the holding company?

19 MR. HEALEY: No. Canadian National Railway
20 Company is the parent company of everything. It
21 has publicly traded stock on both the New York
22 Stock Exchange and the Toronto Stock Exchange.

1 JUDGE DUGGAN: Does the holding -- does the
2 holding company hold Canadian National or is
3 Canadian National the holding company?

4 MR. HEALEY: No. Canadian National is the
5 parent company. It's a publicly held company
6 through ownership.

7 JUDGE DUGGAN: What is the relationship between
8 Canadian National and the holding company?

9 MR. HEALEY: Canadian National Railway Company
10 owns 100 percent of Grand Trunk Corporation, and
11 Grand Trunk Corporation, in turn, owns 100 percent
12 of Illinois Central Railroad Company.

13 JUDGE DUGGAN: So it's your opinion in this case
14 that Illinois Central Railroad is the proper party?

15 MR. HEALEY: And that Canadian National Railway
16 Company is not the proper party.

17 Yes, your Honor.

18 JUDGE DUGGAN: What's the different in cases
19 where Canadian National Railway Company is the
20 party?

21 MR. HEALEY: I don't think there are cases
22 before the Commission where Canadian National

1 Railway Company is the party.

2 Canadian National Railway Company owns
3 no property and employs no people in the state of
4 Illinois.

5 JUDGE DUGGAN: We've had -- let's go off the
6 record. Pardon me.

7 (Discussion off the record.)

8 JUDGE DUGGAN: Okay. After a slightly more
9 clarification on the record, it appears that
10 Mr. Healey's statement is, in fact, the way that
11 the interest of the holdings of Canadian National
12 have been treated before this Commission.

13 And it appears that Illinois Central
14 Railroad Company would be the proper party,
15 assuming the assertion is correct, that, in fact,
16 they are the titleholders to this.

17 Mr. Ellis, do you want to move to
18 substitute Illinois Central Railroad Company as a
19 party in place of Canadian National Railway
20 Company?

21 MR. ELLIS: May I do that orally, Judge, or do
22 you need me to file a motion?

1 JUDGE DUGGAN: I think an oral motion is fine.

2 MR. ELLIS: Then I would so move.

3 JUDGE DUGGAN: Okay. Any objection to that,

4 Mr. Healey?

5 MR. HEALEY: No, your Honor.

6 JUDGE DUGGAN: Okay. Miss Kuntz?

7 MS. KUNTZ: No, your Honor.

8 JUDGE DUGGAN: Mr. VonDeBur?

9 MR. VON DE BUR: No your Honor.

10 JUDGE DUGGAN: Okay.

11 Mr. McNamara?

12 MR. McNAMARA: No, Judge.

13 JUDGE DUGGAN: Then that motion will be granted

14 and we will -- I'll issue an ALJ ruling on that so

15 the record processing can change that.

16 And the --

17 MR. HEALEY: Thank you, Judge.

18 JUDGE DUGGAN: Sure.

19 And the address process for service, is

20 that still the correct address, Mr. Healey?

21 MR. HEALEY: 17641 South Ashland Avenue, yes.

22 JUDGE DUGGAN: Okay.

1 So it's the same address. In fact, the
2 service process does say Illinois Central Railroad
3 Company. Yep.

4 Director of processing change it on his
5 own.

6 All right.

7 Also, let the record show that, off the
8 record, we examined a larger color version of what
9 is attached to the petition as Exhibit A for the
10 purposes of educating myself just slightly on some
11 questions I had with regard to the petition,
12 clarifying simply that, in fact, there is no
13 crossing across the CN tracks as alleged in
14 Paragraph 15 of the petition stating that, in fact,
15 the nearest crossing is .8 miles north and 2.39
16 miles south, and that the Olympia Drive approaches
17 are presently at -- extends to -- from Route 57 on
18 the west to Apollo Drive on the east.

19 Also, that the present petition is
20 seeking for approval to limit this bridge or
21 overpass structure to a point designated as by
22 their -- excuse me -- is it Project A or what are

1 you referring to that as?

2 MR. ELLIS: Simply as milepost 124.7, railroad
3 milepost 124.7.

4 JUDGE DUGGAN: Okay.

5 So that it does not presently -- the
6 present plan is not for a connection to Route 45
7 within the present petition, which, of course, at
8 that point would not be within the realm of the
9 Commission because there's no further crossing at
10 that point.

11 But those are matters that I needed
12 cleared up.

13 Also, I asked regarding the petition and
14 Paragraph 7 referring to a four-lane arterial
15 highway, a-r-t-e-r-i-a-l, whereas Paragraph 9
16 refers to a two-lane highway bridge.

17 And I was formally informed that the
18 plan is for long range for a four-lane highway,
19 but, presently, they're planning for a two-lane
20 highway and a two-lane bridge. That four-lane
21 highway is a long range plan and not a present
22 plan.

1 Does anybody want to correct my -- the
2 off-the-record discussion of my understanding.
3 John?
4 MR. McNAMARA: John would know better than I.
5 The way I read it, it was going to be a
6 four-lane highway going to a two-lane bridge.
7 JUDGE DUGGAN: Okay.
8 Well, let's -- let's stop and right --
9 pick someone out who's going to answer this
10 question for us and then we'll go ahead and refer
11 to that.
12 MR. ELLIS: That would be Matt Hind from Hanson
13 engineers.
14 JUDGE DUGGAN: Steve, this is Matt Hines,
15 H-i-n-e-s?
16 MR. MATTHEW HEYEN: H-e-y-e-n.
17 JUDGE DUGGAN: H-e-y-e-n, from Hanson,
18 H-a-n-s-o-n, engineers.
19 Are you presently planning to build a
20 four-lane highway from Apollo Avenue to -- the
21 milepost again, John?
22 MR. ELLIS: 120- -- 124.7.

1 JUDGE DUGGAN: Is that a county road?

2 MR. ELLIS: That's railroad, railroad milepost

3 124.7.

4 JUDGE DUGGAN: Okay.

5 But -- okay. Let's stop.

6 I wasn't talking -- I was referring to

7 the east end point of this present project, not a

8 milepost.

9 MR. ELLIS: That would be Lincoln -- North

10 Lincoln Avenue.

11 JUDGE DUGGAN: Okay.

12 So let me clarify this, that when I was

13 talking about the present project, my clarification

14 was it would extend from Apollo on the west, over

15 the CN tracks and to North Lincoln Avenue. It

16 would not extend all the way to Route 45.

17 MR. ELLIS: At this time, Judge.

18 JUDGE DUGGAN: Correct.

19 That is not before the Commission.

20 Okay.

21 The -- Mr. Heyen, is the present plan on

22 the project from Apollo to North Lincoln to

1 construct presently a two-lane highway or four-lane
2 highway?

3 MR. MATTHEW HEYEN: Two lane.

4 JUDGE DUGGAN: Okay. All right.

5 Okay. So back to my clarifications --
6 or excuse me, my summary of my understanding. And
7 is there any corrections to that, Mr. Ellis?

8 MR. ELLIS: No, Judge.

9 JUDGE DUGGAN: Okay. Mr. Healey?

10 MR. HEALEY: No corrections, Judge.

11 JUDGE DUGGAN: Miss Kuntz?

12 MS. KUNTZ: No, your Honor.

13 JUDGE DUGGAN: Mr. VonDeBur?

14 MR. VON DE BUR: No, your Honor.

15 JUDGE DUGGAN: Mr. McNamara?

16 MR. McNAMARA: No.

17 JUDGE DUGGAN: Thank you. Okay.

18 Who wants to proceed?

19 John, you want to tell us what you'd
20 like to get done today?

21 MR. ELLIS: Yes, Judge.

22 I have before the administrative law

1 judge a motion for a prehearing conference, which I
2 understand is scheduled for today. I, myself, have
3 identified, I think, six areas that I would like to
4 delve into, if at all possible; specifically,
5 whether or not the parties have any objections to
6 the exhibits attached to my petition.

7 Chance if we could stipulate to some of
8 those documents or if we could set up a schedule of
9 some sort for stipulations to those exhibits,
10 whether or not there -- there would be any
11 objection to the specific bridge design that will
12 be presented for hearing.

13 And it is also my understanding, Judge,
14 that we probably will need a discovery schedule.
15 It's my understanding, in speaking with
16 Mr. McNamara, that they may be presenting some
17 expert witnesses on behalf of the intervenors.

18 Joint petitioners will be having expert
19 witnesses presenting testimony. I've not yet had a
20 chance to speak with Mr. Healey as far as witnesses
21 from or on behalf of the railroad, and I have not
22 been able to talk with IDOT yet about whether or

1 not presentation of witnesses.

2 Also, a time frame for disclosure of
3 those witnesses, possibly a deposition schedule,
4 and also disclosure of exhibits from all parties.

5 The next area that would request be
6 investigated is whether or not there be any
7 limitation on witnesses. Again, I would be
8 specifically looking at the intervenors.

9 My understanding is they have
10 approximately -- well, more than 25 --

11 MR. McNAMARA: 27.

12 MR. ELLIS: 27. Okay. 27.

13 Whether or not Mr. McNamara intends to
14 call each of the 27. If he does, the scheduling
15 when that would happen so that, as he indicated, he
16 doesn't have his clients sitting around waiting for
17 waiting for case -- for me to complete my case so
18 that he can call his witnesses.

19 The next issue would be the amendments
20 to the pleadings. We have addressed the issue of
21 the naming of the railroad as a necessary party to
22 this proceeding. That will take me into the

1 exhibits that I have presented to the Commission,
2 because I have several references to the
3 Canadian National Railroad in those exhibits.

4 Also, whether or not there would be any
5 objection to references to the exhibits being
6 changed.

7 And again, finally, would be the hearing
8 procedure itself, which would go back to -- I'm
9 assuming I will get my case in chief. I'm thinking
10 probably a couple days for me to get through
11 everything I need to do; the railroad, IDOT and the
12 intervenors.

13 So those are some of the issues that I
14 would hope we would be able to address today.

15 JUDGE DUGGAN: Okay. Anybody else have -- want
16 to address that?

17 Mr. Healey?

18 MR. HEALEY: If I can, from the railroad's
19 perspective, we don't frankly intend or hope to be
20 a major player in this process.

21 As we explained to the cities at our
22 first face-to-face meeting, we have absolutely no

1 intention of weighing into the necessity for the
2 bridge issue or necessarily its location. We --
3 frankly, we really don't care where the bridge goes
4 as long as it doesn't interfere with our train
5 operations.

6 We've had some extremely helpful and
7 cooperative and cordial discussions with the cities
8 and the county relative to the design of the bridge
9 where they have shown good willingness, we feel, to
10 work with us on some of the design issues for the
11 bridge.

12 We're waiting for a response back on the
13 last little note relative to the two somewhat
14 minor, but important to us, issues relative to the
15 bridge. And assuming that gets done, we don't
16 intend to have any objection to the construction of
17 the bridge over the railroad.

18 JUDGE DUGGAN: Okay.

19 Miss Kuntz?

20 MS. KUNTZ: At this time -- we have Dave from
21 the district here who might have a little bit more
22 knowledge about this project.

1 Do you have any --

2 JUDGE DUGGAN: Okay.

3 Hold on. Do you want to come up here?

4 Tell the court reporter your name and spell your
5 last name.

6 MR. DAVID SPEICHER: David Speicher,
7 S-p-e-i-c-h-e-r. I'm the local roads engineer for
8 Illinois Department of Transportation, District 5,
9 PO Box 610, Paris, Illinois 61944. Phone, (217)
10 466-7252.

11 JUDGE DUGGAN: Okay.

12 You heard Mr. Ellis' list of the issues
13 that he wanted to consider today to be able to
14 streamline into litigation. You heard that list,
15 correct?

16 MR. DAVID SPEICHER: Yes, sir.

17 JUDGE DUGGAN: Okay.

18 And what's your thoughts on any of that?

19 MR. DAVID SPEICHER: We have no thoughts one way
20 or another.

21 I mean, we would be prepared to provide
22 whatever questions, answers we can from a funding

1 standpoint, from a standpoint of policies, design,
2 background on what may have happened previously or
3 what we may need going forward.

4 JUDGE DUGGAN: Okay.

5 Mr. VonDeBur, your thoughts on the
6 issues raised by Mr. Ellis?

7 MR. VON DE BUR: Your Honor, our principal
8 interest in the issue is the same, the safety of
9 the traveling public.

10 This particular project has been
11 approved as a fiscal year 2013 project in our
12 crossing safety improvement program, but that, of
13 course, is pending complete funding of the project
14 and approval by the Commission.

15 JUDGE DUGGAN: Mr. McNamara?

16 MR. McNAMARA: I really have no comments at this
17 time, Judge.

18 I have to see the exhibits, and we'll go
19 over them. I don't think I could stipulate to them
20 at this time. But I think if we set a date to go
21 over them with my clients, and I'll get back to
22 John and we'll see if we can't reach a stipulation.

1 JUDGE DUGGAN: Okay.

2 MR. McNAMARA: Are there going to be amendments
3 as to the design?

4 MR. ELLIS: Yes, I think there will be a revised
5 bridge drawing which will show a longer span.

6 MR. McNAMARA: Do you have a final cost estimate
7 at this time?

8 MR. ELLIS: At this time, we do not have a
9 final. We have an estimate, but we do not have a
10 final.

11 MR. McNAMARA: Do you have any idea of when
12 you'll have your estimate?

13 MR. ELLIS: I would have to look at my engineers
14 and --

15 JUDGE DUGGAN: And, once again, we don't want to
16 invite open discussion while we have a court
17 reporter.

18 MR. ELLIS: I understand.

19 JUDGE DUGGAN: So if you have somebody you want
20 to answer something, please tell me who's going to
21 answer it and we'll bring them on.

22 MR. ELLIS: That would be Matt Heyen.

1 JUDGE DUGGAN: Okay. Matt Heyen, you want to
2 come up here?

3 Just sit by Mr. Ellis over there.

4 And, again, this is Mr. Heyen from
5 Hansen engineers who previously spoke. So, okay,
6 Mr. Heyen, go ahead and fill in what Mr. Ellis was
7 asking you.

8 MR. MATTHEW HEYEN: The final estimate of costs
9 for the project would be completed with the final
10 estimate of design. That wouldn't be completed
11 until after the ICC hearing be completed and a
12 final bridge design was selected.

13 JUDGE DUGGAN: All right.

14 Does anybody have any agreements here?

15 John?

16 MR. ELLIS: At this point, no, Judge.

17 JUDGE DUGGAN: Okay.

18 I'm not certain that -- how you
19 apportion cost until you have an estimate to work
20 with. And if you don't have an estimate to work
21 with and approve it, I don't know if we're working
22 in a circle here.

1 I'd like to ask Mr. VonDeBur if
2 you're -- if you're familiar with any times that
3 we've apportioned costs without having a final
4 estimate.

5 MR. VON DE BUR: Your Honor, generally, we go
6 with an approximate estimate, which is kind of
7 redundant, but we have preliminary estimates in the
8 16 and \$17 million for the entire cost of the
9 project, and then our funding will cover up to 60
10 percent of a grade separation project.

11 JUDGE DUGGAN: Okay.

12 MR. VON DE BUR: There are other limitations
13 listed.

14 JUDGE DUGGAN: Well, I presume -- is CN
15 contributing anything?

16 MR. HEALEY: (Shaking head.)

17 MR. ELLIS: Judge, it's my understanding --
18 Mr. Healey can correct me -- we are not in the
19 process of closing an existing at-grade crossing
20 with this project.

21 So it's my understanding that the
22 railroad would not be making a contribution to this

1 project. But, again, I would stand corrected by
2 Mr. Healey.

3 MR. HEALEY: Oh, you're not going to be
4 corrected on that, John.

5 JUDGE DUGGAN: All right.

6 MR. HEALEY: The railroad does not anticipate
7 making a financial contribution towards the grade
8 separation structure.

9 JUDGE DUGGAN: Okay.

10 And landowners aren't. I think a
11 fair -- on fairly solid ground on that one.

12 MR. McNAMARA: We'll agree.

13 JUDGE DUGGAN: So, really, you're looking for
14 the grade crossing protection fund, correct?

15 MR. ELLIS: That is correct, Judge.

16 JUDGE DUGGAN: And Mr. VonDeBur has suggested
17 the -- very strongly or lean towards recommending
18 60 percent contribution.

19 Did I understand that?

20 MR. VON DE BUR: That would be our maximum
21 contribution.

22 JUDGE DUGGAN: Okay.

1 So you don't know --

2 MR. VON DE BUR: It is currently programmed for,
3 I believe, 8 to \$9 million from the grade crossing
4 protection fund of that 16 percent of --

5 JUDGE DUGGAN: Okay.

6 And you can work with an estimate
7 without a cap or with a cap or do you --

8 MR. VON DE BUR: Well, as long as we've got an
9 approximate cost, we can at least budget that much,
10 you know, as opposed to -- we have to know the
11 scale of the costs.

12 JUDGE DUGGAN: How did you work --

13 MR. VON DE BUR: 10 million, 20 million, 50
14 million.

15 I'm sorry.

16 JUDGE DUGGAN: How would the order read?

17 Do I say 60 percent of whatever it ends
18 up being or do I say an amount subject to further
19 review?

20 MR. VON DE BUR: That would depend on our final
21 recommendation, once we got --

22 JUDGE DUGGAN: How many -- and I'm saying, give

1 me an example, if you don't have a flat number, if
2 you don't have an number.

3 MR. VON DE BUR: It would be -- generally
4 speaking, it would be 60 percent of those costs
5 eligible for reimbursement, which would include
6 utility relocation, right-of-way procurement,
7 construction costs.

8 JUDGE DUGGAN: With no cap?

9 MR. VON DE BUR: Engineering costs.

10 JUDGE DUGGAN: With no cap?

11 MR. VON DE BUR: Correct.

12 JUDGE DUGGAN: But you're still going to have a
13 limit on your budget.

14 MR. VON DE BUR: Correct.

15 JUDGE DUGGAN: How do you make that work?

16 If you need someone else to answer --
17 save us time. If you don't know how to make it
18 work this way, I'll just let it go at that.

19 MR. VON DE BUR: That's currently what we have
20 programmed.

21 It's not really a static number and
22 changes up to some point where there is an order or

1 a recommendation for an order.

2 JUDGE DUGGAN: Okay.

3 You don't see that as an impediment to
4 proceeding?

5 MR. VON DE BUR: No, your Honor.

6 JUDGE DUGGAN: Okay.

7 All right. Thank you, Mr. Heyen.

8 So it sounds like contribution is not
9 going to be a major issue, John, right?

10 MR. ELLIS: I believe that's correct, Judge.

11 JUDGE DUGGAN: Okay.

12 You still intend to, as you say,
13 probably present amended bridge designs as well as
14 a final estimate. So no one can state whether they
15 have an objection to this specific bridge design
16 yet.

17 And it appears like some of your
18 exhibits have not -- certainly, some of your
19 exhibits are going to be amended, too, and we don't
20 want to stipulate to all of them yet.

21 Do you have any intention of calling all
22 27 people?

1 MR. McNAMARA: I'm afraid it'd get a little
2 cumulative. I hope we don't get into that, Judge.
3 JUDGE DUGGAN: Yeah.
4 MR. McNAMARA: But I would like the
5 opportunity -- I don't want to foreclose anyone. I
6 want to have their say, but I don't -- I would hope
7 not to have a bunch of people just say the same
8 thing.
9 JUDGE DUGGAN: And I would imagine that
10 that's --
11 MR. McNAMARA: Yeah.
12 JUDGE DUGGAN: -- the case -- and --
13 MR. McNAMARA: Yeah.
14 JUDGE DUGGAN: -- at some point, the point is
15 made --
16 MR. McNAMARA: Yes.
17 THE WITNESS: -- and you wouldn't be doing it --
18 MR. McNAMARA: Yeah, that's my intent.
19 JUDGE DUGGAN: Okay.
20 So I would simply -- I hate to impose a
21 hard-core limit when I think that probably common
22 sense and judgment are going to take care of that.

1 As far as scheduling, we would certainly
2 address that in a fashion, as you say, that -- you
3 hang around. I'm sure -- not necessarily half your
4 witnesses unnecessarily spend anytime here.

5 I think that in the nature of things, we
6 would put the people were costing a thousand
7 dollars an hour to your company, you know, expert
8 witnesses, to get them on and out or accommodate
9 them, have them scheduled, shuffle witnesses as
10 necessary.

11 So I -- I would try to avoid a hard
12 schedule to the extent that we all understand the
13 needs of everybody, and we'll work to meet the
14 needs of everybody in scheduling witnesses and not
15 have people waiting around.

16 MR. ELLIS: Right.

17 JUDGE DUGGAN: Okay.

18 MR. VON DE BUR: And it may, Judge, that we can
19 reach a stipulation on the exhibits or some of the
20 exhibits.

21 I've got a letter from the Department of
22 Agriculture. And am I going to have to call the

1 director of the Department of Agriculture to lay
2 the proper foundation to get that into evidence
3 over IDOT and the railroad and intervenors
4 stipulate as to that document.

5 I would like to avoid calling staff to
6 lay the foundation for the documents of the ICC as
7 far as the existing at-grade crossings and all the
8 information pertinent to these cross.

9 But, again, that's going to take some
10 stipulations in one of them in order for that to
11 work.

12 JUDGE DUGGAN: Okay. Well, I think that --

13 MR. McNAMARA: Is staff going to be represented
14 by counsel?

15 MR. VON DE BUR: It's certainly not generally
16 the case.

17 MR. McNAMARA: Not anticipated. Okay.

18 MR. ELLIS: Although, Steve -- is of record in
19 this case.

20 JUDGE DUGGAN: How'd that happen?

21 MR. ELLIS: Filed an ex parte --

22 MR. VON DE BUR: I don't think he's --

1 MR. ELLIS: -- communication.

2 JUDGE DUGGAN: Yeah, I don't think he filed as
3 attorney for anybody.

4 MR. ELLIS: Okay.

5 JUDGE DUGGAN: I don't think that -- not that's
6 his only filing his -- I don't think that relates
7 to the role of attorney for staff.

8 MR. ELLIS: Okay.

9 JUDGE DUGGAN: If you feel it should be
10 clarified, we'll get it clarified.

11 But I do want to address this:
12 What is Department of Agriculture's
13 interest here?

14 MR. ELLIS: The farmland, the existing farmland.

15 JUDGE DUGGAN: And why is that of interest to
16 the Department of Agriculture?

17 MR. ELLIS: I believe, Judge, because farmland
18 would be taken out of production by the
19 construction of this bridge and the related road
20 improvements.

21 JUDGE DUGGAN: I see.

22 Still not head-on why this is -- why we

1 need Department of Agriculture's input and why is a
2 lack of objection is important.

3 MR. ELLIS: I think, Judge -- I don't want to
4 misrepresent the Court.

5 I believe that they are required to do
6 some type of a study for a project such as this and
7 they have to then submit their findings concerning
8 that study.

9 JUDGE DUGGAN: Okay. And is that study an
10 exhibit?

11 MR. ELLIS: It is. It's Exhibit D. Not the
12 study itself, but the --

13 JUDGE DUGGAN: The letter stating objection?

14 MR. ELLIS: That's correct.

15 Yes, it's the state's Farmland
16 Preservation Act that requires a review.

17 JUDGE DUGGAN: Well, my first thought is that if
18 their lack of objection is necessary for this, then
19 why should they not be made a party?

20 It's not so --

21 MR. ELLIS: I don't know why they would be made
22 a party, but...

1 JUDGE DUGGAN: Is it your understanding that
2 their position is required?

3 MR. ELLIS: It's my understanding that the
4 State Farmland Preservation Act, which is
5 referenced in their letter, requires them to
6 conduct a review when farmland is taken out of
7 production. When it's -- as they say, it's
8 converted to a nonagricultural use.

9 And they reference that they have
10 conducted a study of agricultural impacts; and that
11 based upon that, that they do not have any
12 objection to the construction of this bill --
13 bridge and the related highway improvements.

14 MS. KUNTZ: I think we might be able to clarify
15 that a little bit further.

16 JUDGE DUGGAN: Say that again.

17 MS. KUNTZ: Might be able to clarify.

18 JUDGE DUGGAN: Well, I think I understand
19 essentially what I need to understand for -- this
20 is two inquiries; number one, whether they should
21 be a party; and number two, if they're not, whether
22 everybody's going to stipulate to this.

1 So it seems -- I'm leaning towards they
2 may not have to be a party.

3 MR. VON DE BUR: If I may.

4 I believe this would be similar to the
5 EPA or Department of Natural Resources being
6 involved in this. The consulting engineer merely
7 has to obtain permits or permission from specific
8 agencies which become part of this study and the
9 design of that particular -- whether it's a
10 building or a structure or some other engineering
11 requiring consulting services and not really
12 directly involved in the final product. However,
13 they're -- it's part of the process.

14 JUDGE DUGGAN: And you'd agree then that they
15 would normally not be required to be a party.

16 MR. VON DE BUR: I would.

17 JUDGE DUGGAN: So I think the more important
18 question is probably resolved that way and -- is
19 whether everybody's willing to stipulate to that,
20 but --

21 MR. ELLIS: Correct.

22 JUDGE DUGGAN: And if you're -- want to seek an

1 opinion now, I think we got three people who are
2 fine and Ed's -- probably needs to review the
3 question.

4 MR. McNAMARA: You summarized it fine.

5 Yeah.

6 JUDGE DUGGAN: So I think that, yeah,
7 Mr. McNamara's simply going to have to review a lot
8 of things.

9 And since he's got to do that first, it
10 probably serves no purpose in asking everybody else
11 what they're willing to stipulate to yet, because
12 like I say, I think you've got a pretty good feel
13 for that.

14 Do you anticipate doing much discovery,
15 John?

16 MR. ELLIS: If the intervenors are going to
17 present expert witnesses, I would like to have a
18 chance to talk with them beforehand.

19 JUDGE DUGGAN: Okay.

20 MR. McNAMARA: And I think we will, John.

21 MR. ELLIS: Okay.

22 JUDGE DUGGAN: Okay.

1 Well, now let's discuss this then first
2 of all.

3 It's my understanding that the issue is
4 safety. So I don't know if you're trying to
5 address safety or if you're concerned about this
6 being a necessity. Position.

7 MR. McNAMARA: I would like to consider both.

8 JUDGE DUGGAN: Okay.

9 Can you point out to me where this --
10 where that the public convenience would be
11 pertinent? I've got 7401 (phonetic) here, if you
12 want to review it or --

13 MR. McNAMARA: Yeah, I have reviewed it.

14 I agree that the primary issue is going
15 to be safety, but my question, as you said, the
16 bridge to nowhere. We have a bridge being built
17 with five lanes of track of open air, and it's an
18 old plan that was initially going to 45.

19 JUDGE DUGGAN: Excuse me one second.

20 John, is this okay for him to address
21 this right on? Because at this point, like I say,
22 we have a prehearing conference. I was just trying

1 to get an general idea of what's -- so we wouldn't
2 have discovery on an issue that we may rule to be
3 irrelevant.

4 So Ed's trying to explain a little bit
5 here -- Ed's trying to give me a little bit more
6 enlightenment which may be outside of scope.

7 So the question is whether it's
8 agreeable for Ed to help me understand where he's
9 trying to go with this.

10 MR. ELLIS: Well, I think it's important that
11 the judge be exposed to as much information as
12 possible about a bridge going over existing
13 railroad tracks.

14 JUDGE DUGGAN: Okay. Mr. Healey, is it
15 agreeable for Mr. McNamara to continue down the
16 road he was going?

17 MR. HEALEY: I have no objection, your Honor.

18 JUDGE DUGGAN: Miss Kuntz?

19 MS. KUNTZ: No objection.

20 JUDGE DUGGAN: Mr. VonDeBur?

21 MR. VON DE BUR: No objection.

22 JUDGE DUGGAN: Thanks, Ed.

1 MR. McNAMARA: And I don't want to testify --
2 going to be a bridge to nowhere. It's just out
3 there by itself.

4 And if you really did connect it up and
5 somehow have truck traffic, there'd be no truck
6 traffic going down Lincoln Avenue because that's an
7 oil and chip road. There's no connector over to
8 40 -- Route 45.

9 So, basically, what we're going to have
10 is a proposed -- my understanding. I've been over
11 there and that's why I'd like everyone to go over
12 there to see all this.

13 The proposed roundabout here. There's
14 an oil and chip road here. So what you'd have
15 is -- assume you built it, you'd have, I guess, two
16 lanes going to a two-lane bridge going over there
17 to a roundabout that goes nowhere. Doesn't go to
18 45.

19 And worst case scenario, there would be
20 a safety issue if this traffic was diverted to this
21 North Lincoln Avenue coming down here.

22 So -- and I think it's important that we

1 go over there and see the actual layout because
2 it's hard to conceive of when you look at this.

3 JUDGE DUGGAN: Okay.

4 What I asked you about where you're
5 finding the public convenience and necessity
6 issues.

7 MR. McNAMARA: Here's where -- here's where I
8 think it impinges:

9 Right now the public convenience and
10 necessity is being served by the existing roadway,
11 which is -- there's a roadway to the north.
12 There's roadways to the south.

13 JUDGE DUGGAN: All right. I think you missed my
14 question.

15 MR. McNAMARA: I'm sorry.

16 JUDGE DUGGAN: My question is, where is my
17 statutory authority to consider public convenience
18 and necessity for this petition?

19 MR. McNAMARA: I think as it relates -- only as
20 it relates to safety.

21 JUDGE DUGGAN: Okay.

22 MR. McNAMARA: The safety -- there's no

1 question. Safety is an issue.

2 JUDGE DUGGAN: Okay.

3 It's neither no more safe or probably
4 less safe. There is no present crossing or
5 passenger fairly safe structures.

6 To the extent that you say that
7 channelling traffic down to a road that cannot,
8 should not handle that --

9 MR. McNAMARA: North Lincoln Avenue.

10 JUDGE DUGGAN: You also pointed south.

11 MR. McNAMARA: Well, that's -- yes. So that
12 is -- it runs south from the proposed roadway.

13 JUDGE DUGGAN: Okay.

14 North Lincoln Avenue is both north and
15 south?

16 MR. McNAMARA: Yes.

17 JUDGE DUGGAN: Okay.

18 And you believe that the south road does
19 not have the capacity to handle the kind of traffic
20 that would be brought to that point.

21 MR. McNAMARA: As well as the north branch.

22 JUDGE DUGGAN: Okay.

1 But I do think, John, that where you're
2 focusing or you want to focus on that overpass and
3 not the connection, it would sure make the case
4 easier for you, and I think it takes care of their
5 concerns the more you show the reality of that in
6 the future.

7 And I don't know how hard that is, to
8 show that this is the long-range planning to
9 connect to 45.

10 MR. ELLIS: Judge, again, as I represented
11 before, I think going back to the 1997 IDOT
12 document, which will be a part of my case in chief,
13 we'll talk about the long-range plan for a
14 connection between 57 and 45 and that there will be
15 testimony --

16 JUDGE DUGGAN: Well, I'm talking about present
17 intentions, present plans, present forecasts,
18 present rules to -- objections.

19 MR. ELLIS: Correct.

20 JUDGE DUGGAN: And I think that is the easiest
21 way and most direct way to address these concerns.

22 And no matter how legitimate you think

1 it is as a technical issue or not, if there's a
2 present plan to do it, then I think the -- I think
3 that's the easiest way to address the issues.

4 MR. ELLIS: Agreed. And that's what we will be
5 presenting.

6 JUDGE DUGGAN: Okay.

7 But in '97 plan and discussed about the
8 1997 plan is not the kind of strength in argument
9 that I'm talking about.

10 MR. ELLIS: No, I understand that. I understand
11 that.

12 And that's why I will have individuals
13 who will be testifying as to what is the plan,
14 status of the plan as it exists today, 2012 --

15 JUDGE DUGGAN: I mean, that was on the petition.

16 MR. ELLIS: -- and going forward.

17 JUDGE DUGGAN: It was on the petition.

18 So for some reason, it doesn't support a
19 petition and so it seemed to me that that should be
20 important enough to put in the evidence.

21 And the degree of the reality of those
22 plans, I think, affects Miss -- Mr. McNamara's

1 position. There's a lot of times people have to do
2 things in stages. That's all there is to it. If
3 it's not going to be built till 2098, that's a
4 different issue.

5 So -- and what I'm really getting at is,
6 how much time and effort intervenors put in
7 challenging something that you're going to come out
8 and say, Hey, we're building this tomorrow, you
9 know.

10 My guess is -- as I say, if you were
11 building this as part of this project, then that's
12 my understanding most of Ed's argument falls by the
13 wayside.

14 MR. ELLIS: Well, again, Judge, my approach has
15 been -- is that I believe the jurisdiction of the
16 Commission extends to the structure over the
17 tracks.

18 JUDGE DUGGAN: But he's going to be able to make an
19 argument --

20 MR. ELLIS: I understand.

21 JUDGE DUGGAN: -- my entire argument or you want
22 to say, you know, we really don't need to because

1 here's the deal, there's the road that's going in.

2 You know, you want to say.

3 MR. ELLIS: Is that something you'll stipulate

4 to?

5 MR. McNAMARA: I wasn't.

6 JUDGE DUGGAN: Yeah.

7 I mean, in other words, you're talking

8 about potential complicated discovery and many days

9 of trial, which is fine.

10 MR. ELLIS: Two days of trial, Judge.

11 JUDGE DUGGAN: Okay.

12 I thought that was you alone and not his

13 27 witnesses.

14 MR. ELLIS: Well, if he has 27 witnesses, we may

15 be here for five or six days.

16 JUDGE DUGGAN: Yeah.

17 But -- so I'm just saying that if you're

18 anticipating something that complicated that could

19 otherwise be streamlined because you've got other

20 evidence of when you intend to get this completed,

21 I think that that seems to be a very crucial part

22 of the evidence.

1 To suggest to Mr. McNamara as to how far
2 and to what degree he wants to go to present his
3 case.

4 MR. ELLIS: Okay.

5 JUDGE DUGGAN: Let me ask you this:

6 Is that -- have you discussed that with
7 Mr. McNamara or told him the plans?

8 MR. ELLIS: No, we have not.

9 JUDGE DUGGAN: Okay.

10 I would suggest this:

11 That you let Mr. McNamara in on what
12 your reference is going to be about the structure.

13 Unless I'm just totally missing
14 everything here, that's seems to be crucial. And
15 the sooner you get him that information, then the
16 sooner he can evaluate and you guys can decide
17 perhaps where you're going and what's going to be
18 worthwhile, John.

19 As I said, if it's not for 20 years,
20 it's -- that's the way it is. But I don't know
21 that and you're not telling me.

22 So...

1 MR. ELLIS: Well, I don't want to become a
2 witness, Judge.

3 JUDGE DUGGAN: Yeah.

4 Well, anyway, in the interest of having
5 a prehearing conference to try to streamline the
6 issues and decide what's really going to be an
7 issue and how complicated discovery would be --
8 (unintelligible) -- got your contribution is going
9 to be worked out. I'm sure you got a good bridge
10 design.

11 It's going to come up and be fine,
12 barring somebody's finding a part of it totally
13 unnecessary. But, you know, the odds are those
14 aren't going to be significant issues, okay?

15 As far as putting on the evidence for
16 the bridge's designs, generally, that doesn't take
17 us a lot of time.

18 Okay. If everybody wants to stipulate,
19 I suppose we can stipulate.

20 MR. ELLIS: Well, that's my hope.

21 JUDGE DUGGAN: Yeah.

22 MR. ELLIS: That's my hope.

1 JUDGE DUGGAN: Yeah.

2 But, I mean, if you have your engineer
3 here and they're planning on coming, they probably
4 need to be here just in case something arises. And
5 basically they can -- you know, they don't talk
6 about every nut and bolt, you know.

7 So -- relatively quickly just trying to
8 authenticate the plans -- (inaudible) simply
9 identify and authenticate the plans and be subject
10 to clarification questions and examination as
11 necessary. And a lot of times, you don't know what
12 clarifications you're going to need until we're
13 here.

14 But by that, I don't mean to exclude if
15 everybody gets on the same page, that I couldn't
16 have an agreement to do everything by -- okay.

17 But as you say, the -- generally, the
18 proof isn't that difficult to put on, but the
19 stipulation does help, okay?

20 Did you say we're going to amend the
21 pleading in some other way other than the caption?

22 MR. ELLIS: Well, again, I have my exhibits

1 attached to the petition and I have eight or nine
2 references within those exhibits to
3 Canadian National Railroad.

4 JUDGE DUGGAN: If it was for that reason only --

5 MR. ELLIS: Yeah. Correct. Correct.

6 JUDGE DUGGAN: Okay.

7 Then I guess that's -- if you want to
8 stipulate that all references to Canadian National
9 shall now be references to Illinois Central, we can
10 do that.

11 If you just want to file and get it
12 clean, you can do that. It's pretty much your call
13 on it.

14 MR. ELLIS: Well, again, I would -- I would so
15 move for its stipulation.

16 Again, I don't know --

17 MR. McNAMARA: He's just going to modify the
18 exhibits on there face, right?

19 MR. ELLIS: Right.

20 MR. McNAMARA: If you want to do that, that's
21 fine.

22 MR. ELLIS: Well, I'm trying to keep from

1 refiling.

2 JUDGE DUGGAN: Yeah.

3 Okay.

4 MR. McNAMARA: Well, then let's so move.

5 JUDGE DUGGAN: All right.

6 Then we'll ask everyone if they agree

7 that every reference in the petition and the

8 exhibits which is made to the Canadian National

9 Railway Company, if those references will be deemed

10 to be references to the Illinois Central Railroad

11 Company.

12 Is everyone willing to stipulate to

13 that?

14 Mr. Healey?

15 MR. HEALEY: Yes, your Honor.

16 JUDGE DUGGAN: Miss Kuntz?

17 MS. KUNTZ: Yes, your Honor.

18 JUDGE DUGGAN: Mr. VonDeBur?

19 MR. VON DE BUR: Yes, your Honor.

20 JUDGE DUGGAN: Mr. McNamara?

21 MR. McNAMARA: Yes, Judge.

22 JUDGE DUGGAN: Okay.

1 And Mr. Ellis?

2 MR. ELLIS: Yes, Judge.

3 JUDGE DUGGAN: Okay. Very good.

4 Well, with that in mind, John, what do
5 you think?

6 What do you -- what would you like me to
7 do here?

8 MR. ELLIS: Maybe -- maybe, Judge, just to keep
9 my feet as well as the intervenors' feet to the
10 fire, set forth some type of time frame for
11 Mr. McNamara and I -- we do not -- or I do not
12 intend to exclude the Illinois Department of
13 Transportation or the Illinois Central Railroad
14 Company from any of these discussions.

15 But it seems to me that Mr. McNamara and
16 I need to focus on whether or not we can come to
17 any agreement on my exhibits, whatever exhibits he
18 may be proposing and whatever witnesses he may be
19 proposing.

20 I don't know if he wants to depose my
21 engineers, any of the local government officials
22 involved in this project.

1 I definitely would like to have a
2 disclosure of his expert witnesses and I would like
3 an opportunity to basically take their depositions.

4 So if you could set forth some type of
5 time frame for us to accomplish that, I think that
6 would be my request.

7 JUDGE DUGGAN: Okay.

8 What I would suggest was, if you share
9 with Mr. McNamara the evidence of the plans as to
10 when this road will be complete or when this -- 45
11 will take place, that then Mr. McNamara may have a
12 better idea how he wants to approach this.

13 Now, if I'm wrong -- but I think if he's
14 flying in the dark now -- is that --

15 MR. McNAMARA: That is a major -- it's a major
16 piece of the puzzle.

17 JUDGE DUGGAN: Okay.

18 MR. McNAMARA: Yeah.

19 JUDGE DUGGAN: Would that help you determine how
20 you do want to approach this?

21 MR. McNAMARA: At least in part.

22 Sure, Judge.

1 JUDGE DUGGAN: Okay.

2 MR. McNAMARA: Yeah.

3 JUDGE DUGGAN: Because I think you said you
4 might have experts. You don't know.

5 MR. McNAMARA: That's right.

6 And even -- I'm pretty sure I'm going to
7 have experts, even if they have a concrete plan for
8 Route 45.

9 But, certainly, my experts' feeling
10 about the case will probably vary somewhat
11 depending upon how certain 45 is going to be.

12 JUDGE DUGGAN: Okay.

13 So -- and I think that's -- is there any
14 reason you object to doing that?

15 I mean, I'm not ordering you to do it,
16 but I think it's the first move that moves things
17 along.

18 MR. ELLIS: Well, Judge, I mean if I have it as
19 some type of discoverable document, I'm more than
20 happy to share it with Mr. McNamara.

21 JUDGE DUGGAN: But, as you know, sometimes
22 matters revealed in discovery leads to other

1 matters.

2 In this particular case, if it appears
3 this is the first one where I want to determine
4 where else I'm going. As I say, if it's going to
5 be built in 2015, my case is one thing. If it's
6 going to be built in 2098, my case is another
7 thing.

8 Now, again, I'm off base, all I've got
9 to say it's not helping me move the case forward.
10 It's not helping me with the decision.

11 MR. McNAMARA: It does help move the case
12 forward. That's the key part of it.

13 I think that's the first step. It's
14 certainly a first step that I can take back to my
15 people and talk with them about.

16 JUDGE DUGGAN: And you're saying that if you
17 have something that's discoverable, you have it or
18 you don't have it.

19 I mean, I don't know.

20 I mean, it's my understanding that you
21 said that you were going to put evidence on as to
22 the intentions and projections.

1 MR. ELLIS: That's correct.

2 JUDGE DUGGAN: Okay.

3 Then he can get it through
4 interrogatories. He can get it through discovery
5 requests until he finds out what it is that you do
6 have a plan to put evidence on.

7 I'm not suggesting that -- if you're
8 wanting to streamline this, then that bit of
9 cooperation, the voluntary providing of all the
10 evidence you intend to put on his projection would
11 move this forward.

12 And again --

13 MR. ELLIS: I mean, the difficulty, Judge -- for
14 me, my difficulty is that I have clients who are
15 governmental entities. Those bodies change. Their
16 budgets change. It's year to year to year.

17 They do have plans for the future, but
18 how far out, I don't know.

19 JUDGE DUGGAN: Okay.

20 MR. ELLIS: And, again, that takes me back to
21 1997, which was a plan for a road between 57 and
22 45. That was what stimulated all this to begin

1 with.

2 We've gotten to the point where we're at
3 Apollo Drive. We now have to have the approval of
4 this Commission to be able to go over the tracks to
5 continue the trek towards 45.

6 But, again, whatever I have, I'm more
7 than happy to share with Mr. McNamara.

8 JUDGE DUGGAN: Okay.

9 Whatever you and your clients have.

10 MR. ELLIS: That's correct. That's correct.

11 JUDGE DUGGAN: Okay.

12 And the point is, if you're just saying
13 you don't know, I understand. But it's
14 important -- and nothing is written in concrete, we
15 understand. I think everybody understands that.

16 But until we know that you don't know
17 versus we know that you got a projected five-year
18 plan, those are two different --

19 MR. ELLIS: Well, so much of it is right here in
20 the petition. I mean, there's a lot of stuff here
21 in this document.

22 So whatever else I have available, I'm

1 more than happy to share with Mr. McNamara. And
2 I'm sure his clients have information that he's
3 more than willing to share with me.

4 JUDGE DUGGAN: Go ahead.

5 MR. McNAMARA: I suggest John and I -- we office
6 about 150 yards from each other.

7 We ought to get together and see what
8 you got so that -- and level with each other as to
9 the -- whether there are any concrete plans to take
10 the thing over to 45.

11 We'll meet, talk about it, and, you
12 know, one way another we'll smoke each other out.

13 JUDGE DUGGAN: Yeah. Okay.

14 I just reviewed the petition. It says
15 nothing about any time frame or definite plans in
16 the sort of -- or how definite plans are, what the
17 intentions are. It says nothing of that sort. So
18 that didn't help me.

19 Yeah.

20 So, obviously, Mr. McNamara, can do his
21 discovery the most efficient ways he deems
22 possible. I'm just saying that sometimes people

1 who want to get things done cooperate and move them
2 forward.

3 And if you simply want to do formal
4 discovery and do it step by step, and then you be
5 the first one, then find out, then I find out I
6 need witnesses.

7 I'm not setting a discovery schedule
8 until we're over that first hump because I don't
9 have a clue what to do.

10 MR. ELLIS: Okay.

11 JUDGE DUGGAN: Okay? You want to.

12 MR. ELLIS: Maybe we do a status hearing for 30
13 days.

14 JUDGE DUGGAN: You can get us over that first
15 hump somehow, then we'll know a little -- everybody
16 knows a little bit better what's going on, we can
17 set a discovery schedule, but...

18 You're not going to have -- if you're
19 not going to get formal discovery out and responded
20 to within two or three days unless you're telling
21 me you're going to -- this stuff and send it out
22 about 45 days. Set it out about 45 days, okay?

1 That gives you guys at least a chance to
2 do first round of discovery.

3 If you got -- if you find that things
4 are going to be more productive faster, you can
5 give me a call. Sometimes we can do a round phone
6 call, I mean with everybody on there.

7 MR. ELLIS: Sure.

8 JUDGE DUGGAN: But I'm just not sure what we'll
9 be doing in 30 days.

10 MR. ELLIS: Well, by that time, he and I will
11 have met and we will then need -- we will know
12 whether or not we need to request formal discovery.

13 JUDGE DUGGAN: You can do that in two weeks?

14 Okay.

15 MR. ELLIS: Then do it in two weeks.

16 MR. McNAMARA: I think I'd need to leave -- I
17 hope that --

18 JUDGE DUGGAN: You tell me.

19 MR. McNAMARA: 30.

20 JUDGE DUGGAN: You guys -- you guys -- you need
21 30 or 45.

22 MR. McNAMARA: Whatever your pleasure.

1 MR. ELLIS: 30 days. 30 days.

2 MR. McNAMARA: Let's see if we can agree on a
3 date.

4 JUDGE DUGGAN: 14th.

5 MR. McNAMARA: The 14th?

6 JUDGE DUGGAN: Well, I'm pretty packed around
7 there.

8 MR. McNAMARA: Can we go to reconvene -- how
9 about March 22nd, which is a Thursday.

10 JUDGE DUGGAN: I got to look at my calendar. We
11 got the AV room.

12 If you want me to run upstairs, I can
13 find --

14 MR. ELLIS: Well, hopefully, Judge, let's just
15 do a telephonic status conference.

16 We simply need the railroad, IDOT, the
17 intervenors and myself.

18 JUDGE DUGGAN: -- six people.

19 MR. ELLIS: And staff and --

20 MR. McNAMARA: I agree -- I'm not trying to be
21 obstreperous, no more than normal, but I think
22 eyeball to eyeball does work, when you get to

1 talk --

2 JUDGE DUGGAN: Either way, I'd have to go look
3 at my calendar whether we did an AV room or we can
4 put Mr. Healey on a phone, since he's doesn't seem
5 to be objecting too much here. And we can all --
6 rest of us here in any hearing room.

7 MR. McNAMARA: Yeah.

8 JUDGE DUGGAN: Well, that being the case, I'll
9 go run up and see if I can get a time that's not --
10 an AV room that will work.

11 (Recess taken.)

12 JUDGE DUGGAN: I'm going to do -- ruling
13 petition to intervene, motion to substitute and
14 also that all the references in all the dockets --
15 all the documents will be referring to CN will be
16 IC.

17 MR. ELLIS: Correct.

18 JUDGE DUGGAN: -- ruling those two things, and
19 then a notice to hearing for another prehearing
20 conference.

21 MR. ELLIS: Yeah.

22 JUDGE DUGGAN: Okay. The 15th anybody have a --

1 (inaudible.)

2 All right. Back on the record.

3 So this matter will be continued to

4 March 20th at 2:00 o'clock p.m. at a conference

5 room to be designated and notice of hearing with

6 Mr. Healey appearing by telephone.

7 If there's nothing else, then that will

8 conclude the hearing.

9 Thank you for today.

10 (Whereupon, said hearing was

11 continued to)

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